

## OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

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### NOTICE OF PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD AND NOTICE OF PROPOSED CHANGES TO TITLE 8 OF THE CALIFORNIA CODE OF REGULATIONS

Pursuant to Government Code Section 11346.4 and the provisions of Labor Code Sections 142.1, 142.2, 142.3, 142.4, and 144.6, the Occupational Safety and Health Standards Board of the State of California has set the time and place for a Public Meeting, Public Hearing, and Business Meeting:

**PUBLIC MEETING:** On **April 17, 2008**, at 10:00 a.m.  
in the Auditorium of the State Resources Building  
1416 9th Street, Sacramento, California 95814.

At the Public Meeting, the Board will make time available to receive comments or proposals from interested persons on any item concerning occupational safety and health.

**PUBLIC HEARING:** On **April 17, 2008**, following the Public Meeting  
in the Auditorium of the State Resources Building  
1416 9th Street, Sacramento, California 95814.

At the Public Hearing, the Board will consider the public testimony on the proposed changes to occupational safety and health standards in Title 8 of the California Code of Regulations.

**BUSINESS MEETING:** On **April 17, 2008**, following the Public Hearing  
in the Auditorium of the State Resources Building  
1416 9th Street, Sacramento, California 95814.

At the Business Meeting, the Board will conduct its monthly business.

**DISABILITY ACCOMMODATION NOTICE:** Disability accommodation is available upon request. Any person with a disability requiring an accommodation, auxiliary aid or service, or a modification of policies or procedures to ensure effective communication and access to the public hearings/meetings of the Occupational Safety and Health Standards Board should contact the Disability Accommodation Coordinator at (916) 274-5721 or the state-wide Disability Accommodation Coordinator at 1-866-326-1616 (toll free). The state-wide Coordinator can also be reached through the California Relay Service, by dialing 711 or 1-800-735-2929 (TTY) or 1-800-855-3000 (TTY-Spanish).

Accommodations can include modifications of policies or procedures or provision of auxiliary aids or services. Accommodations include, but are not limited to, an Assistive Listening System (ALS), a Computer-Aided Transcription System or Communication Access Realtime Translation (CART), a sign-language interpreter, documents in Braille, large print or on computer disk, and audio cassette recording. Accommodation requests should be made as soon as possible. Requests for an ALS or CART should be made no later than five (5) days before the hearing.

OCCUPATIONAL SAFETY AND HEALTH  
STANDARDS BOARD

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JOHN D. MACLEOD, Chairman

NOTICE OF PROPOSED CHANGES TO TITLE 8  
OF THE CALIFORNIA CODE OF REGULATIONS  
BY THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Notice is hereby given pursuant to Government Code Section 11346.4 and Labor Code Sections 142.1, 142.4 and 144.5, that the Occupational Safety and Health Standards Board pursuant to the authority granted by Labor Code Section 142.3, and to implement Labor Code Section 142.3, will consider the following proposed revisions to Title 8, Construction Safety Orders, General Industry Safety Orders, and Petroleum Safety Orders—Refining Transportation and Handling of the California Code of Regulations, as indicated below, at its Public Hearing on **April 17, 2008**.

1.            TITLE 8:        **CONSTRUCTION SAFETY ORDERS**  
                         Chapter 4, Subchapter 4, Article 29  
                         Section 1710(k)(2)  
                         **Permanent Flooring—Skeleton Steel Construction in Tiered Buildings**
  
2.            TITLE 8:        **GENERAL INDUSTRY SAFETY ORDERS**  
                         Chapter 4, Subchapter 7, Article 109  
                         Section 5168  
                         **PETROLEUM SAFETY ORDERS—REFINING**  
                         **TRANSPORTATION AND HANDLING**  
                         Chapter 4, Subchapter 15, Article 5  
                         Section 6775  
                         **Static Electricity**

Descriptions of the proposed changes are as follows:

1. **TITLE 8:**      **CONSTRUCTION SAFETY ORDERS**  
Chapter 4, Subchapter 4, Article 29  
Section 1710(k)(2)  
**Permanent Flooring—Skeleton Steel Construction in Tiered Buildings**

### **INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW**

The Occupational Safety and Health Standards Board (Board) intends to adopt this proposed rulemaking action pursuant to Labor Code Section 142.3, which permits the Board to follow certain procedures when adopting standards that are substantially the same as federal standards addressing occupational safety and health issues.

The United States Department of Labor, Occupational Safety and Health Administration (OSHA) promulgated a standard addressing the subject of this rulemaking. The federal rule is set forth as 29 Code of Federal Regulations Section 1976.754(b)(2). That federal standard provided the basis for the current Section 1710(k)(2) of the Construction Safety Orders (CSO). The current proposal addresses two portions of the federal rule that are not duplicated in Section 1710(k)(2).

A Form 9 dated July 29, 2007, from the Division of Occupational Safety and Health noted that an exception found in the federal standard is not present in Section 1710(k)(2). Review of Section 1710(k)(2) in light of that Form 9 disclosed that the words “whichever is greater,” found in the federal standard, also are not present in Section 1710(k)(2). This proposal seeks to augment Section 1710(k)(2) by adding the missing wording.

With the changes made in accordance with this proposal, the proposed standard is substantially the same as the final rule promulgated by Federal OSHA. Therefore, Labor Code Section 142.3(a)(3) exempts the Board from the provisions of Article 5 (commencing with Section 11346) and Article 6 (commencing with Section 11349) of Chapter 3.5, Part 1, Division 3 of Title 2 of the Government Code when adopting a standard substantially the same as a federal standard; however, the Board is still providing a comment period and will convene a public hearing. The primary purpose of the written comments and oral comments at the public hearing is to: 1) identify any clear and compelling reasons for California to deviate from the federal standard; 2) identify any issues unique to California related to this proposal which should be addressed in this rulemaking and/or a subsequent rulemaking; and 3) solicit comments on the proposed effective date. The responses to comments will be available in a rulemaking file on this matter and will be limited to the above areas.

The effective date is proposed to be upon filing with the Secretary of State as provided by Labor Code Section 142.3(a)(3). The standard may be adopted without further notice even though modifications may be made to the original proposal in response to public comments or at the Board’s discretion.

### **COST ESTIMATES OF PROPOSED ACTION**

#### **Costs or Savings to State Agencies**

No costs or savings to state agencies will result as a consequence of the proposed action.

### **Impact on Housing Costs**

The Board has made an initial determination that this proposal will not significantly affect housing costs.

### **Impact on Businesses**

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

### **Cost Impact on Private Persons or Businesses**

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

### **Costs or Savings in Federal Funding to the State**

The proposal will not result in costs or savings in federal funding to the state.

### **Costs or Savings to Local Agencies or School Districts Required to be Reimbursed**

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

### **Other Nondiscretionary Costs or Savings Imposed on Local Agencies**

This proposal does not impose nondiscretionary costs or savings on local agencies.

## **DETERMINATION OF MANDATE**

The Occupational Safety and Health Standards Board has determined that the proposed standard does not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this standard does not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

This proposed standard does not require local agencies to carry out the governmental function of providing services to the public. Rather, the standard requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standard does not in

any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

The proposed standard does not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standard.

### **EFFECT ON SMALL BUSINESSES**

The Board has determined that the proposed amendment may affect small businesses. However, no economic impact is anticipated.

### **ASSESSMENT**

The adoption of the proposed amendments to this standard will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

### **REASONABLE ALTERNATIVES CONSIDERED**

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

2.            TITLE 8:        **GENERAL INDUSTRY SAFETY ORDERS**  
Chapter 4, Subchapter 7, Article 109  
Section 5168  
              **PETROLEUM SAFETY ORDERS—REFINING**  
              **TRANSPORTATION AND HANDLING**  
Chapter 4, Subchapter 15, Article 5  
Section 6775  
              **Static Electricity**

### **INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW**

This rulemaking proposal is based upon an Occupational Safety and Health Appeals Board (OSHAB) Decision After Reconsideration (DAR), Docket 00-R4D2-1108 and 1109 in the Matter of Pacific Resource Recovery, dated April 28, 2004, and tank cleaning standards contained in Chapter 8.12 of the National Fire Protection Association (NFPA) 77, Recommended Practice on Static Electricity, 2007 edition.

The DAR describes an incident in which an employee was using a high pressure water washing sprayer to clean flammable sludge from the interior of a tanker truck with a squeegee when an explosion occurred from within the tank blowing the employee off the top of the truck and killing him. The Division of Occupational Safety and Health determined that both the squeegee and the power spray nozzle of the water washer were potential sources of ignition.

General Industry Safety Orders (GISO) Section 5420 requires tanks and vessels that last contained flammable materials be purged of vapors and assessed for residual flammability. No work involving

potential sources of ignition in or in contact with the vessel may be performed until flammability testing indicates it is safe to work. Section 5168 addresses the components of air, steam and inert gas cleaning systems used to clean and purge flammable residues from tanks or vessels and requires that they be bonded to the tank. The DAR establishes the employer did not comply with this requirement because it was believed that the water-based washing system used at the time of the accident was not subject to the requirements of Section 5168 which lists steam but not water. The OSHAB reasoned that water cleaning systems are subject to the requirements of Section 5168 which addresses steam since water is the vaporized state of steam. Water is not specifically mentioned in the standard. Board staff believes that Section 5168 should be amended to include water consistent with the OSHAB DAR.

Board staff notes that the NFPA 77-2007 standard addresses static electricity control in relation to various tank cleaning methods in Chapter 8.12. Section 5168 addresses air, inert gas and steam but does not address water, nor does it address grit used in grit blasting as potential sources of static electricity. Board staff proposes to include water and grit in Section 5168(b) and Section 6775(c) of the Petroleum Safety Orders (PSO), which are currently identical. In addition, Board staff proposes to amend Section 5168 to add a new subsection based on NFPA 77 language that would address static electricity control for steam cleaning and to reference Section 5168 in Section 6775(c).

Board staff believes these proposed amendments will clarify to the employer consistent with the NFPA 77-2007, that 1) Section 5168 applies to water cleaning operations and grit blasting, 2) the components of various cleaning systems as specified are to be grounded as well as bonded and, 3) that prior to beginning cleaning operations on tanks and vessels, the requirements of Section 5420 are to be complied with. The proposal would also update Section 5168 with respect to static electricity control for steam cleaning which can create very large charge densities according to the NFPA 77 standard and increase the potential for static electricity.

This proposed rulemaking action contains non-substantive, editorial revisions. These non-substantive revisions are not discussed in this Informative Digest. However, these proposed revisions are clearly indicated in the regulatory text in underline and strikeout format. In addition to these non-substantive revisions, the following actions are proposed:

#### **Section 5168. Static Electricity.**

This Section addresses operations that have the potential to create static electrical charges (such operations as: use of oxidizers, cleaning operations, and purging). This section also addresses bonding and grounding methods and devices used to control static discharge.

Amendments are proposed to add the terms “water” and “grit” in subsection (b) as cleaning media and specify that the components of the systems that use air, water, grit and steam are to be grounded as well as bonded as currently required. Subsection (b) is amended further by proposed language that reminds the reader that Section 5420 requirements for purging and testing tanks or vessels for residual levels of solvent that could ignite in the presence of an ignition source are to be complied with prior to commencing work.

The proposed amendments will clarify to the employer that water and grit cleaning systems are static electricity risks to the extent that the components of each system must be grounded and bonded and that the employer must remove residual solvent vapors in tanks and vessels to effectively guard against a fire and/or explosion triggered by static electricity discharge which could result in serious employee injury or death.

A new subsection (e) based on the NFPA 77-2007 standard is proposed to address static electricity control methods for steam cleaning. The proposal would require the employer to ground conductive steam cleaning components and ground and bond the conductive components of the tank or vessel to prevent the static charge from reaching an atmosphere capable of supporting combustion and explosion.

### **Section 6775. Static Electricity.**

This section specifies requirements designed to reduce and control the propagation of static electrical discharge and addresses grounding and bonding methods, strength requirements for ground and bonding conductors, use of flexible conductors, attachment of grounding and bonding clamps and clips and the design of static bonding installations.

Subsection (c) contains language that is identical to that contained in GISO Section 5168(b) addressing the control of static discharge for equipment and various cleaning systems involving the use of steam, air, and inert gas.

Amendments are proposed to add the terms “water” and “grit” in subsection (c) as cleaning media to specify that the components of the systems that use air, water, grit and steam are to be grounded as well as bonded. Subsection (c) is amended further by proposed language that reminds the reader that the requirements for purging and testing tanks or vessels contained in Sections 5420 and 5168 are to be complied with prior to the start of work.

The proposed amendments will clarify to the employer that water and grit cleaning systems are static electricity risks to the extent that the components of each system must be grounded and bonded and that the employer must remove residual solvent vapors in tanks and vessels to effectively guard against a fire and/or explosion triggered by static electricity discharge which could result in serious employee injury or death.

## **COST ESTIMATES OF PROPOSED ACTION**

### **Costs or Savings to State Agencies**

No costs or savings to state agencies will result as a consequence of the proposed action.

### **Impact on Housing Costs**

The Board has made an initial determination that this proposal will not significantly affect housing costs.

### **Impact on Businesses**

The Board has made an initial determination that this proposal will not result in a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

### **Cost Impact on Private Persons or Businesses**

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

#### **Costs or Savings in Federal Funding to the State**

The proposal will not result in costs or savings in federal funding to the state.

#### **Costs or Savings to Local Agencies or School Districts Required to be Reimbursed**

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

#### **Other Nondiscretionary Costs or Savings Imposed on Local Agencies**

This proposal does not impose nondiscretionary costs or savings on local agencies.

### **DETERMINATION OF MANDATE**

The Occupational Safety and Health Standards Board has determined that the proposed standards do not impose a local mandate. Therefore, reimbursement by the state is not required pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these standards do not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

These proposed standards do not require local agencies to carry out the governmental function of providing services to the public. Rather, the standards require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed standards do not in any way require local agencies to administer the California Occupational Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

These proposed standards do not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standards.

### **EFFECT ON SMALL BUSINESSES**

The Board has determined that the proposed amendment may affect small businesses. However, no economic impact is anticipated.

### **ASSESSMENT**



The adoption of the proposed amendments to these standards will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

### **REASONABLE ALTERNATIVES CONSIDERED**

Our Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

A copy of the proposed changes in STRIKEOUT/UNDERLINE format is available upon request made to the Occupational Safety and Health Standard Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833, (916) 274-5721. Copies will also be available at the Public Hearing.

An INITIAL STATEMENT OF REASONS containing a statement of the purpose and factual basis for the proposed actions, identification of the technical documents relied upon, and a description of any identified alternatives has been prepared and is available upon request from the Standards Board's Office.

Notice is also given that any interested person may present statements or arguments orally or in writing at the hearing on the proposed changes under consideration. It is requested, but not required, that written comments be submitted so that they are received no later than April 11, 2008. The official record of the rulemaking proceedings will be closed at the conclusion of the public hearing and written comments received after 5:00 p.m. on April 17, 2008, will not be considered by the Board unless the Board announces an extension of time in which to submit written comments. Written comments should be mailed to the address provided below or submitted by fax at (916) 274-5743 or e-mailed at [oshsb@dir.ca.gov](mailto:oshsb@dir.ca.gov). The Occupational Safety and Health Standards Board may thereafter adopt the above proposal substantially as set forth without further notice.

The Occupational Safety and Health Standards Board's rulemaking file on the proposed actions including all the information upon which the proposals are based are open to public inspection Monday through Friday, from 8:30 a.m. to 4:30 p.m. at the Standards Board's Office, 2520 Venture Oaks Way, Suite 350, Sacramento, CA 95833.

The full text of proposed changes, including any changes or modifications that may be made as a result of the public hearing, shall be available from the Executive Officer 15 days prior to the date on which the Standards Board adopts the proposed changes.

Inquiries concerning either the proposed administrative action or the substance of the proposed changes may be directed to Marley Hart, Executive Officer, or Michael Manieri, Principal Safety Engineer, at (916) 274-5721.

You can access the Board's notice and other materials associated with this proposal on the Standards Board's homepage/website address which is <http://www.dir.ca.gov/oshsb>. Once the Final Statement of Reasons is prepared, it may be obtained by accessing the Board's website or by calling the telephone number listed above.

OCCUPATIONAL SAFETY AND HEALTH  
STANDARDS BOARD

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JOHN D. MACLEOD, Chairman